

REMARKSProcedural History and  
Summary of Final Office Action

Claims 1-49 were pending in the above-identified patent application.

The Examiner finally rejected claims 34, 37-46 and 49 as being anticipated by Agrawal et al. U.S. Patent 6,097,212. Claims 35 and 36 were objected to as being dependent from a rejected base claim, but allowable subject matter was indicated. Claims 1-33, 47 and 48 were allowed.

In a first Reply Under 37 C.F.R. § 1.116, applicants presented arguments as to why Agrawal did not anticipate the rejected claims. In an Advisory Action dated July 11, 2005, the Examiner maintained the final rejection. This Second Reply Under 37 C.F.R. § 1.116 is filed in view of that Advisory Action.

Applicants' Reply

Applicants have proposed incorporating the limitations of allowable claim 35 into claim 34. Accordingly, applicants have also proposed cancelling claim 35 without prejudice (insofar as its limitations survive in proposed amended claim 34), and amending claim 36 to adjust its dependency accordingly. Therefore, claims 34 and 36-48, if amended as proposed, should now be allowable.

Applicants also have proposed cancelling claim 49 without prejudice. Applicants expressly reserve the right to pursue claim 49, as well as unamended claim 34 (and its dependent claims) in one or more continuing applications.

With regard to claim 49, applicants acknowledge that its patentability was never separately argued in any of applicants' prior replies. This stems from the February 9, 2005 Office Action, in which the rejection of claim 49 was not included on Form PTOL-326. Although the claim was discussed in the Detailed Action, the omission from Form PTOL-326 caused applicants to inadvertently overlook claim 49. Because the

April 25, 2005 final rejection was essentially identical to the original rejection, applicants continued to overlook claim 49 in replying to the final rejection (notwithstanding its inclusion on the April 25, 2005 PTOL-326). Applicants state for the record that the omission of a separate argument for patentability of claim 49 was not intended as acquiescence in the rejection of claim 49, nor otherwise as a waiver of applicants' rights in claim 49."


Amendment of the Specification

Applicants have proposed amending Paragraph [0011] of the specification to insert a missing period at the end of the second sentence."

Conclusion

For the reasons set forth above, applicants respectfully submit that this application, if amended as proposed, would be in condition for allowance. Reconsideration, entry of the proposed amendments, and prompt allowance of this application are respectfully requested.

Respectfully submitted,

  
Jeffrey H. Ingerman  
Reg. No. 31,069  
Attorney for Applicants  
FISH & NEAVE IP GROUP  
ROPES & GRAY LLP  
Customer No. 36981  
1251 Avenue of the Americas  
New York, New York 10020-1105  
Tel.: (212) 596-9000

\* The Examiner has not asserted any such waiver.

\*\* In view of the purely formal nature of the amendment, applicants respectfully submit that the amendment is not a substantial amendment, or a narrowing amendment, under the doctrine of Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 535 U.S. 722, 62 USPQ2d 1705 (2002), and related cases.